

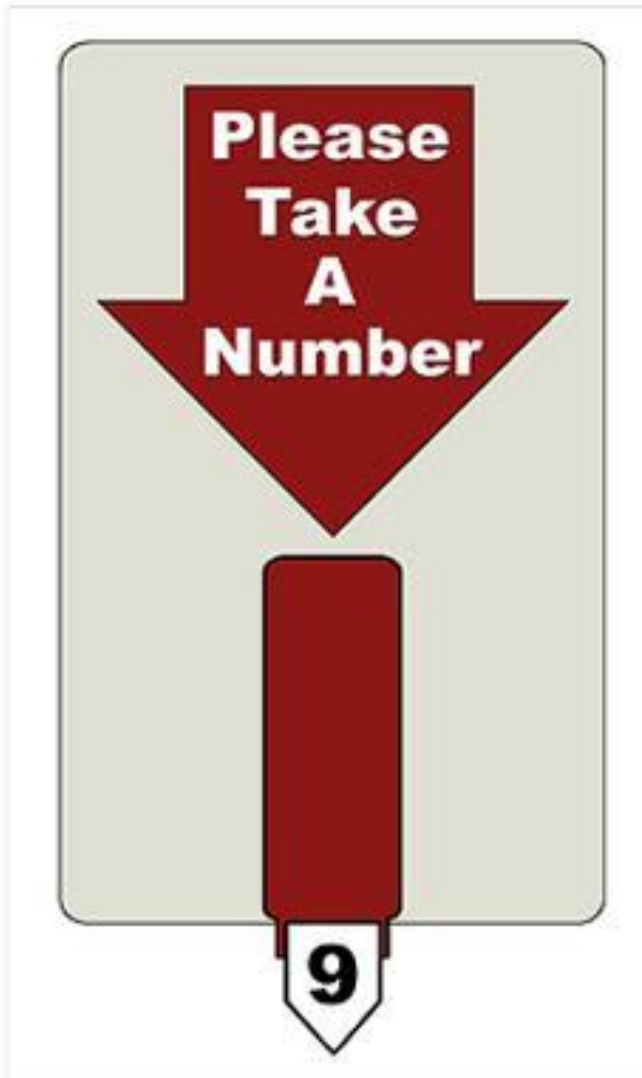
DoD VICTIM WITNESS ASSISTANCE *Update*



Office of Legal Policy, OUSD (P&R)







VWAP Challenges

- **Understanding your vital role in the process**
 - Expanding range of victim assistance support providers
 - Keeping up to date on changes in law, DoD/Service policies, programs, procedures, and standards for victim assistance personnel
- **Helping victims understand their rights and navigate the military justice system during a time of great change**
- **Improving care and support one person at a time**

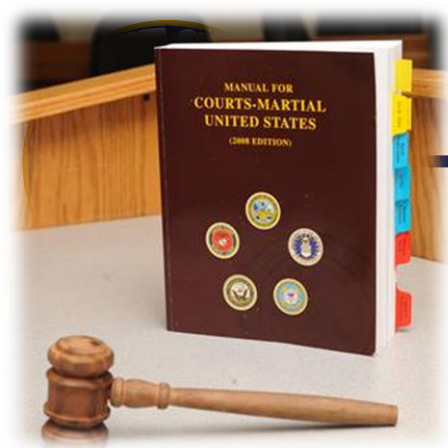
Overview

- **References**
- **Major Law and Policy Changes**
- **Enhanced Victims' Rights**
- **DoD Victim Assistance Standards**
- **Special Victim Investigation and Prosecution Capability**
- **Specialized Training**
- **Collaboration and Feedback**



Key References

- **National Defense Authorization Act (FY 14 & 15)**
- **DoD Instruction 5505.19**, “Establishment of Special Victim Investigation and Prosecution (SVIP) Capability within the Military Criminal Investigative Organizations”
- **DTM 14-003**, “DoD Implementation of Special Victim Capability (SVC) Prosecution and Legal Support”
- **DRAFT DoDI 1030.02**, “Victim Witness Assistance” (Proposed rule to be published in Federal Register)



Changes to UCMJ/MCM Since 2012

The FY14 NDAA was the “most extensive UCMJ revision since the Military Justice Act of 1968.”

-MG(Ret) John D. Altenburg, USA

Changes to the UCMJ	Changes to the MCM
FY12 NDAA: 8 Articles FY13 NDAA: 4 Articles FY14 NDAA: 14 Articles <u>FY15 NDAA: 10 Articles</u> Total: 36 Articles	Implemented EO 13643: ~110 changes <u>EO 13669: ~41 changes</u> Total: ~151 changes
	Pending implementation (With OMB) Residium EO: ~121 Changes <u>2014 EO: ~147 Changes</u> Total: ~268 changes

Key Reforms

- 1. Crime victims' rights article enacted within the UCMJ (Article 6b) (modeled on 18 U.S.C. § 3771)**
- 2. Codification of SVC/VLC program**
10 U.S.C. § 1044e
 - *Includes representation of legal assistance-eligible victims of not only sexual assaults of adults, but also victims of stalking, voyeurism, forcible pandering, indecent exposure, and child sexual offenses*
- 3. Expansion of SVC/VLC program for members of the Reserve Component**
 - *Covers Reservists not in a title 10 status, where the sex-related offense has a nexus to the victim's military service*



Significant DoD Policy Changes

- DoDI 1030.02, *Victim and Witness Assistance* Combined
- **Expands crime victims' rights** and requires the Military Services to create mechanisms for the enforcement of these rights IAW section 1701 of the FY 14 NDAA
- Implements section 1716 of the FY14 NDAA requiring that Military Services to provide **Special Victims' Counsel/Victims' Legal Counsel** to personally represent victims of certain offenses
- Requires the Military Services to establish a **special victim investigation and prosecution capability (SVIP)** comprised to provide enhanced support to local installations and victims in cases of sexual assault, serious domestic violence, and child abuse
- **DD Forms 2701 to 2705** are being revised to reflect these changes

Enhanced crime victims' rights

1. Be reasonably protected from the accused offender.
2. Be provided with reasonable, accurate, and timely notice of:
 - (a) A public hearing on the continuation of confinement before the trial of the accused.
 - (b) A preliminary Article 32 hearing relating to the offense.
 - (c) A court-martial relating to the offense
 - (d) A public proceeding of the Military Department Clemency and Parole Board hearing relating to the offense
 - (e) The release or escape of the accused, unless such notice may endanger the safety of any person.

Enhanced crime victims' rights

3. Be present at, and not be excluded from any public hearing or proceeding described in this enclosure

...Unless the military judge or Article 32 hearing officer of a preliminary hearing, after receiving clear and convincing evidence, determines that testimony by the victim would be materially affected if the victim heard that hearing or proceeding.

4. Be reasonably heard at preliminary hearings, public sentencing hearings, and public clemency and parole board hearing

5. Confer with the attorney for the U.S. Government in the case

6. Receive restitution under State and federal law

7. Have proceedings free from unreasonable delay

8. Be treated with fairness and respect for his/her dignity and privacy

9. Express his or her views to the commander or convening authority as to the disposition of the case

DoD Standards for Victim Assistance Services

- **DoDI 6400.07** was published in November 2013
- Sets **competence, ethical, and foundational program** standards for all SAPR, FAP, and VWAP personnel
- Establishes **DoD Victim Assistance Leadership Council** to advise the Secretary of Defense on policies and practices related to the provision of victim assistance across the DoD

Communicating Effectively

- **Recognize basic principles of effective communication, including verbal, nonverbal, and cultural variation**
- **Listen attentively** to the victims and use the information they provide to offer appropriate assistance and referrals for services
 - **Recognize the range of reactions to victimization** (e.g. anger, self-blame, helplessness, etc.) and respond to the victim accordingly
 - **Understand the impact of trauma** on victims' ability to connect to services and to assist in the military justice or administrative process
 - **De-escalate crisis situations**, providing support as necessary so that assessment and assistance planning may take place.
 - **Educate and explain your role** to victims and to other agency personnel in order to address victims' needs
 - **Understand the impact of specific types of crime** or offense on the needs of victims and use specific support as appropriate to the type of victimization (e.g. utilizing safety planning).
 - Understand and **describe to victims the variety of resources** and referral, advocacy, and outreach services available in the immediate environment

Maintaining High Ethical Standards

- 1) Ensure victims understand that participation is voluntary.
- 2) Respect the privacy of information per restricted reporting, applicable privileged communications, and privacy rules,
- 3) Understand your role, responsibilities, limitations, and perform duties IAW applicable laws, policies, and regulations.
- 4) Respect victims' rights and act accordingly.
- 5) Refrain from behaviors that communicate blame, suspicion regarding victim accounts of the crime or offense, condemnation for past behavior, or other judgmental sentiments to the victim.
- 6) Avoid conflicts of interest and disclose any possible conflict to the appropriate program personnel and victims served.
- 7) Seek support and increased levels of supervision when necessary to serve the best interests of a victim

Foundational Program Standards

- Document and administer services to ensure quality and responsiveness to victims' needs
- Provide Access and Referral to Available Resources/Services
- Respect victim's right to make own decisions about services
- Ensure victim understands his/her rights
- Provide information about military justice system and process
- Manage expectations
- Ensure victims understand what constitutes legal advice and representation, and who can and cannot provide
- Coordinate with victim's chain of command, SVC/VLC, and other support personnel as needed

Special Victim Investigation and Prosecution Capability (SVIP)



- Distinct, collaborative group of skilled investigators, prosecutors, paralegals/legal support and VWAP personnel
- Applies sexual assault, serious domestic violence, and child abuse cases
- Intended to enhance, not replace legacy systems (i.e. FAP, victim advocates)

Who is in the SVIP?

- Military Service SVIP programs will include, at a minimum, specially trained and selected:
 1. **MCIOs Investigators**
 2. **Judge advocates** to serve as prosecutors.
 3. **VWAP personnel**
 4. **Paralegal or administrative legal support personnel**
- SVIP personnel will collaborate closely with local **SARCs, victim advocates, FAPMs and DAVAs** during all stages of investigative and military justice process

Activation Protocol

- **All SVIP members notified w/in 24 hours** of MCIO determination that an allegation meets covered offense criteria to activate the Service SVIP support.
- **SVIP members meet w/in 48 hours** (w/o regard to the day of the week). May be in person, by phone, or VTC.
- **Minimal monthly MCIO-JA case reviews** and consultation and to ensure all aspects of the victim's needs are being met.



Specialized MCIO Training

- **Legal jurisdiction** for conducting criminal investigations.
- **Elements of proof** for covered offenses
- **Crime scene management**, DNA collection, and **forensic evidence preservation**
- **Rights of crime victims** and available victim and witness assistance, support, and counseling services
- **Sensitivities associated** with adult sexual assault, domestic violence, and child abuse victims
- **Obtaining protection orders** for military members and civilians
- **Working with the FAP** in accordance with DoD policy

Specialized Legal Support/VWAP Training

- **Elements of proof** for covered UCMJ offenses.
- **Effective interviewing techniques** and the impact of trauma on memory.
- **Unique legal issues and sensitivities** associated w/ sexual assault, domestic violence, and child abuse victims
- **Best practices** for interacting with/supporting victims
- **Ensuring victim rights** are understood, respected, and enforced
- **Building advanced litigation**, trial advocacy case management, and related technical skills
- **Understanding the impact of trauma** and its effect on behavior and the memory of a traumatic incident when interacting with a victim
- **Identification of any safety concerns and specific needs**
- **How to request appropriate experts**, such as specially-trained pediatric forensic interviewers to support complex child abuse cases

SVIP-C Implementation

- **NAVY**

- 9 regional Senior Trial Counsel work with Navy Criminal Investigative Service (NCIS) special agents
- Trial Counsel Assistance Program (TCAP) provides case review, advisory, and direct trial support
- HQE support



- **USMC**

- Regional Trial Counsel work with NCIS
- HQE Support



Collaboration and Teamwork

- **Active liaisons** should be established at the installation level with:
 - Local military and civilian **law enforcement** agencies
 - **Sexual Assault Response Coordinators**
 - **Victim advocates** (sexual assault and domestic violence)
 - **Family Advocacy Program** Managers
 - **Chaplains**
 - **Medical** and mental health care providers, and experts, such as Sexual assault forensic examiners
 - **Commanders**
Other persons designated by the Secretaries of the Military Departments necessary to support special victims
- SJAs or designated legal rep will participate in FAP and adult sexual assault case management meetings

Victim Feedback

- **Did victim receive key notifications and advice?**
 - Understood rights as a victim?
 - Aware of available support services?
 - Felt able/empowered to exercise these rights during the process?
 - Perceived military justice as fair?
 - Specific comments and suggested improvements?
- **The goal is improving victim care and support**



“Nobody washes a rental car”

TOM FRIEDMAN



Conclusion

- You are at the vanguard of developing, implementing, and improving these capabilities
- Effective selection, certification & training support
SVIP Capability and victim assistance program is key to success
- Takeaways
 - *Continue to improve linkages between service providers*
 - *Work as a team. Share best practices across Service*
 - *Provide a continuum of care to meet victim's needs.*



Questions?